

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C.804/2010

% Reserved on: 15th March, 2010
Date of Decision: 17th March, 2010

SUBRATA BRAHMA Petitioner
! Through: Mr.Satish Aggarwala, Adv.

versus

\$ STATE Respondent
^ Through: Mr. Jaideep Malik, APP

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

: **V.K. JAIN, J.**

1. This is a petition under Section 482 of the Code of Criminal Procedure for quashing the criminal proceedings pending against the petitioner before ACMM, New Delhi under Section 420 of IPC. The grievance of the petitioner is that

though the chargesheet against him was filed way back on 21st December, 1998 and order for framing charge was passed on 5th October, 2004, the examination of the complainant-Neera Malik, who was partly examined on 6th September and 3rd August, 2006 has not been concluded. The petitioner filed Crl.M.C.No. 2311 of 2008 for quashing the proceedings against him. Vide order dated 23rd July, 2009, this Court, while disposing of the above-referred Crl.M.C., directed the Trial Court to ensure that the trial was concluded within a period of six months from the date of the order. The grievance of the petitioner is that the trial has not been concluded despite the time fixed vide order dated 23rd July, 2009 having expired.

2. Since the petitioner claimed that complete documents had not been supplied to him, this Court, while disposing of Crl.M.C.2311 of 2008, directed the petitioner to inspect the Court Record by 25th July, 2009 and give a list of documents, which he had not received, to the concerned PP on 25th July, 2009 itself. Those documents were to be supplied to the petitioner by 29th July, 2009, so that the Trial Court would examine the witness on 30th July, 2009, which was the date already fixed before it.

3. A perusal of the order-sheets and documents filed by the petitioner would show that he did not give list of deficient documents to the learned APP on 25th July, 2009. It was on 27th July, 2009 that a letter was sent to the learned APP posted in the Court of ACMM, New Delhi requesting him to ensure availability and organizing of all the documents, as mentioned in the list of documents, as available on the Court File. He specifically referred to documents at serial No.9 and serial No.16 of the list, documents pertaining to taking the specimen signatures of accused persons and the report of FSL dated 27th August, 1996. The case of the petitioner is that this letter to the APP was sent by speed post, as the Naib Court refused to accept the letter. A perusal of the order-sheet dated 30th July, 2009 would show that on that day, the order of this Court dated 23rd July, 2009 was not brought by the petitioner to the notice of the Trial Court. An application dated 30th July, 2009 was filed by the petitioner before the Trial Court on the same day and finds mention in the order-sheet. A copy of the application, which the petitioner has filed as Annexure-D to this petition, shows that even in this application, the petitioner did not inform the Trial Court that this Court had directed

conclusion of evidence, within six months from the date of the order passed by it on 23rd July, 2009. In para 2 of the application, the petitioner specifically stated that copy of the order had not been made available to him and he would be producing the same immediately on its being made available. Pursuant to the application filed by the petitioner on 30th July, 2009, the matter was adjourned to 22nd August, 2009 for PE/FP. On 22nd August, 2009, the Presiding Officer has gone for training and, therefore, the Link Magistrate adjourned the matter to 4th September, 2009. On 4th September, 2009, the Trial Court was informed that this Court had directed supply of deficient copies to the petitioner before 30th July, 2009. The Trial Court directed that the documents be supplied on that very day. The counsel, who was appearing for the petitioner, was requested to mark all the documents which he wanted to be supplied, but, he requested that the matter may be taken up at 2.00 pm so that the main counsel, who had inspected the file, may come and see what documents were required. When the matter was again taken up at 2.00 pm, the Court was informed that the learned counsel for the petitioner was busy in this Court and adjournment was sought. Accordingly,

the matter was adjourned to 5th September, 2009. On 5th September, 2009, the learned counsel for the petitioner was again not present and the proxy counsel, who appeared on his behalf, stated that remand papers, FSL report with documents and copies of bill book were to be supplied to them, which were on record. The counsel was given liberty to flag all those documents so that no further dispute remained on the point of supply of documents. The proxy counsel, however, was unwilling to flag the documents, since he was not sure, which documents were to be supplied and senior counsel was not available. On his request, the matter was adjourned till 2.00 pm. When the matter was again at 2.00 pm, the main counsel was still not available and the proxy counsel again stated that he was not sure about the documents and requested that the matter may be taken up on any Saturday. The matter was accordingly adjourned to 19th September, 2009. On 19th September, 2009, the learned counsel for the petitioner was again not available to assist the Court and the matter was passed over on the request of the petitioner. When the matter was taken up again, the learned counsel for the petitioner appeared and was heard. Since the learned APP wanted some

time to file reply, the matter was again taken up at 2.00 pm. Reply by learned APP was filed at that time and the matter was adjourned to 24th September, 2009 with a direction to call IO. On 24th September, 2009, the petitioner appeared with a proxy counsel. IO was also present on that day and copies of documents were supplied to the accused under his signatures. The matter was then adjourned to 24th October, 2009 on the request of the petitioner. On 24th October, 2009, the complainant-Neera Malik was present in person, but the Presiding Officer was on leave, therefore, the matter was adjourned to 13th November, 2009 by the Link Magistrate. On 13th November, 2009, the Presiding Officer was again on leave and the matter was adjourned to 16th January, 2010 by the Link Magistrate.

4. On 16th January, 2010, the complainant was not present and was directed to be summoned for 30th January, 2010. On 30th January, 2010, the accused made a submission that his application for supply of documents was still pending. The matter was, therefore, adjourned to 2nd February, 2010. On 2nd February, 2010, the application stated to be pending could not be located and the learned counsel was requested to

supply another copy of the application so that the same could be disposed of. The matter was then adjourned to 08th February, 2010 and the petitioner was exempted from personal appearance for next date of hearing.

5. On 08th February, 2010, copy of the application, whereby correction of order-sheet dated 28th May, 2009, had been sought, was supplied. The learned counsel for the petitioner was also, however, not available when the matter was taken up. When the matter was again taken up at 12.30 pm, the learned counsel for the petitioner was not present. When the matter was taken up at 2.00 pm, the learned counsel for the petitioner was still not available and a proxy counsel, who appeared on his behalf, stated that he was not aware about the case or the application under consideration. The matter was then adjourned to 09th February, 2010. In that day, the application for correcting the order dated 28th May, 2009 was dismissed by a speaking order running into 6 pages and the matter was adjourned to 28th February, 2010 for P.E./cross-examination of PW-1. On 28th February, 2010, two applications were filed by the petitioner. Both the applications were dismissed with costs, by passing a speaking order and

the matter was adjourned to 06th March, 2010. On 06th March, 2010, no witness was present and the matter was adjourned to 15th March, 2010.

6. It is, thus, clear from a careful analysis of the proceedings of the Trial Court that the petitioner is at least partly responsible for the delay in concluding the trial of the case in terms of the directions given by this Court on 23rd July, 2009. When directions for time-bound conclusion of the trial are given by the Court on the request of an accused, the expectation of the Court is that since the accused himself claims to be interested in expeditious conclusion of the trial, he will render his full cooperation and will not seek any adjournment. But the proceedings before the Trial Court show that on a number of dates, the learned counsel for the petitioner was not present and the proxy counsel deputed by him did not have knowledge about the facts of the case and insisted upon the matter being taken up in the presence of the main counsel. The matter had to be adjourned on 4th September, 2009, 5th September, 2009, 24th September, 2009 and 08th February, 2010 on the request of the petitioner. Proceedings also show that the petitioner, instead of seeking

expeditious recording of evidence, filed applications, which the Trial Court found having no merit and which were dismissed by a speaking order which the petitioner has chosen not to challenge. If the accused is at least partly responsible for delaying the trial, it is not open to him to seek quashing of proceedings merely on account of delay in conclusion of trial. Some adjournments took place on account of non-availability of the Trial Judge and the dates, in his absence, were fixed by the Link Magistrate. On 22nd August, 2009, 21st October, 2009 and 13th November, 2009, the matter could not be taken up since the Presiding Officer was not available and the next date of hearing was given by the Link Magistrate and there is nothing on record to show that the Link Magistrate was apprised of the order of this Court dated 23rd July, 2009. Therefore, it cannot be said that there has been any willful disobedience of the order of this Court by the learned Trial Judge. As noted earlier, the complainant Neera Malik was present on 24th October, 2009, but her remaining deposition could not be recorded as the Presiding Officer was on leave.

7. Taking into consideration the conduct of the petitioner, as noted from the proceedings of the Trial Court and other

circumstances, including that the Presiding Officer was not available on three dates of hearing, it will not be appropriate to quash the criminal proceedings merely on account of the delay in compliance of the order of this Court dated 23rd July, 2009. At the same time, it has to be ensured that the trial against the petitioner does not drag unnecessarily. Hence, in order to ensure an expeditious trial, the following directions are given:

- (i) The Investigating Officer will take dasti summons of all the remaining witnesses from the Trial Court, within one week from today for a suitable dates to be fixed by the Trial Court in the week commencing 12th April, 2010 and shall serve all of them on his own responsibility;
- (ii) If any witness, including the complainant Neera Malik, remains absent without a reasonable ground, despite service of summons upon him/her, it will be open to the Trial Court to take coercive steps to ensure his/her presence;
- (iii) If the entire remaining evidence of the prosecution cannot be concluded in the week commencing 12th April, 2010, the Trial Court will fix one or more dates in the week commencing 10th May, 2010 and will give dasti summons of the remaining witnesses to the Investigating Officer in the Court itself and the

IO shall serve them within one week of obtaining the summons from the Trial Court;

(iv) The Trial Court will ensure that the remaining evidence of the prosecution is concluded on or before 31st May, 2010.

The petition stands disposed of with these directions.

One copy of this order be sent to the concerned DCP within three days and one copy be given dasti to learned APP. The DCP will ensure that the Investigating Officer remains present before the Trial Court on every date of hearing fixed by it for recording of prosecution evidence and serves the summons upon the witnesses, in terms of this order.

(V.K.JAIN)
JUDGE

MARCH 17 , 2010
BG